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# MJQ

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# From the Editor:

Welcome to the first issue of **Montana Justice Quarterly**.

We're calling **MJQ** a training publication, because we're presenting articles that have instructional value to the people who we hope read it--the police and peace officers, prosecutors, coroners, judges and criminal justice administrators of Montana. We also hope that **MJQ** promotes understanding of the criminal justice system among people who do not work in that system, but who rely on it for protection and service.

Now, about our first issue.

Julius Wachtel, Special Agent, Bureau of Alcohol, Tobacco and Firearms, offers sound advice on how to fight property crime through surveillance (**Criminal Investigations**, page 6). Of particular interest to police chiefs and sheriffs, Mr. Wachtel's strategy recognizes the burden that law enforcement administrators bear every day--inadequate resources and increasing demands for service. After raising questions about the worth of several highly acclaimed strategies against property crimes, like directed patrolling and sting operations, Mr. Wachtel calls up two real-life examples of property offender surveillance that have yielded dramatic results. (One example is the recent joint effort of the Cascade County Sheriff's Office and the Great Falls Police Department.)

Marc Racicot, one of Montana's best-known prosecutors and chief of the Attorney General's County Prosecutor Services Bureau, offers valuable insight into the state's newly enacted statute concerning pretrial discovery in criminal cases (**For the Prosecution**, page 11). As Mr. Racicot ably points out, prosecutors at last have equal footing with defense lawyers in the discovery process, though the new law is suffering the inevitable slings and arrows of political controversy and judicial review. Mr. Racicot explains the new process and answers the critics.

From the Montana Highway Patrol comes an article that describes the ins and outs of the "Gray Market," that marketplace where buyers find expensive European cars at substantial savings (**Traffic Enforcement**, page 16). The problem, say authors Wilkerson, Barry and Frellick, is that Gray Market cars require special modifications to meet federal safety and environmental rules, and sometimes the modifications fall short. It's a problem that concerns state motor vehicle regulators and police at every level.

Elsewhere in this issue of **MJQ**, Larry Majerus (Administrator of the state Motor Vehicle Division) discusses the crime of odometer tampering. Robert Nieuwenhuyse of the state Fire Marshal Bureau outlines new state and local efforts against arson. The state Medical Examiner, Dr. Ronald Rivers, provides an introduction to a continuing series on using science to find justice. Mike Miller, chief of the Criminal Identification Bureau, imparts his knowledge and wisdom on fingerprinting. And Karen Nelson of CJIN Services offers an enlightening look at the Criminal Justice Information Network.

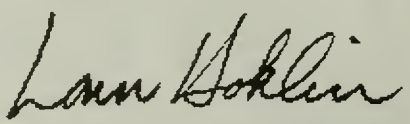
In the spring issue of **MJQ**, we will present the first part of a series on investigation of homicides that are linked to conspiracies, something that contributing editor Gary Carrell (who is also chief of the state Criminal Investigation Bureau) and his assistants know much about. We will also offer an ongoing segment on the rights of crime victims and witnesses, a matter that has gained pressing importance with the Legislature's recent enactment of a new victim-witness law. Yet another newcomer to the next issue will be **ComCenter**, in which *your* letters will appear; we hope for a flood of them, not only pats on the back, but also gripes and suggestions.

A few final words about **MJQ** and its purpose:

Attorney General Mike Greely wants this publication to be a vehicle for conveying useful knowledge and information to a broad segment of Montana's criminal justice community. He wants **MJQ** to answer a need that for many years has gone unanswered, a need for a statewide periodical that targets criminal justice professionals. He hopes that readers have reason to save their copies for future reference on the job; and that the layman who picks up a copy will find something interesting and enlightening in its pages. But equally important, the Attorney General intends **MJQ** to show that *training* has risen to a high priority in his office, not only in providing a new facility for the Montana Law Enforcement Academy, or in reforming the Academy's management and upgrading its staff, but also in providing tangible training benefits to the people who serve in criminal justice. Attorney General Mike Greely intends **MJQ** to be *that* kind of tangible benefit.

The Office of Attorney General and the Department of Justice owe a debt of gratitude to the members and staff of the Montana Board of Crime Control for their diligent commitment to making **MJQ** a reality. Without the personal help of Crime Control Division Administrator Mike Lavin and Peace Officer Standards and Training Council Executive Director Clayton Bain, we would never have received the federal grant that enabled us to begin publication.

We hope you enjoy **MJQ**. Let us know what you think of it, and give us the benefit of your suggestions.



## Scientific Investigations

# Justice through Science

**Ronald Rivers, MD**

*Ten years ago, Duane Sharbono choked his pregnant wife to death. He then pushed her car into a ravine. The only passengers in the car were his dead wife and their unborn child. He drenched the car with gasoline and set it afire to give the appearance of a fatal auto accident.*

*Duane Sharbono, however, did not get away with murder. The instrument of his downfall was a* ***gas chromatograph*** *in the new state crime laboratory in Missoula. The instrument revealed that the gasoline inside his wife's car was distinctly different from the gasoline in the fuel tank, meaning that someone had set the fire, presumably with criminal intent.*

*For the first time, a Montana court admitted this analysis as evidence in a criminal case, and the evidence withstood attack by an expert defense witness from Colorado, who was a chemist with a PhD. The Montana Supreme Court later affirmed the conviction.*

Most criminal justice professionals know that this kind of case requires the services of the Montana Division of Forensic Science, the agency that includes the crime laboratory and the office of the State Medical Examiner. But questions occasionally arise over what scientific procedures are within the Division's capabilities. And despite the fact that the Division has existed in its present form for more than a half-decade, many law enforcement people still ask: "*Who* are these crime lab people? *Where* are they? *What* can they do for us?"

The state of Montana first established its forensic laboratory, or "crime lab," in 1970, in a drafty and cramped corner of a movie theater basement in Missoula. Ten years later the laboratory moved to its present location on Missoula's Front Street. Within the near future, the laboratory will move yet again to more spacious quarters in St. Patrick's Hospital.

A comparison of the laboratory's budgets for

**(next page)**

equipment and operating expenses shows how the importance of scientific criminal investigations has grown in Montana since the laboratory came into existence: in 1970, the budget for equipment and operations was $10,000; for Fiscal Year 1986, that budget is $224,000. The first piece of equipment that the laboratory purchased with its meager initial budget was a gas chromatograph. Today, the laboratory has five gas chromatographs, a mass spectrophotometer, a co-oximeter, an ultraviolet spectrophotometer, an atomic absorption spectrophotometer and an enzyme immunoassay instrument--names that only a forensic scientist could love. In addition to this array, the laboratory maintains 48 breath alcohol analyzers throughout the state, for use by local law enforcement agencies in enforcing DUI laws.

The laboratory's first chemist was Arnold Melnikoff, who today holds the position of Chief of the Laboratory of Criminalistics. On August 18, 1970, Arnold handled the first piece of criminal evidence that the laboratory received--a quantity of a crystalline substance that the Bozeman Police Department suspected was LSD.

**"The state of Montana first established its forensic laboratory, or 'crime lab,' in 1970, in a drafty and cramped corner of a movie theater basement in Missoula."**

The laboratory acquired a second chemist in 1972, but not until 1975 did it muster the resources to establish a whole new section, *forensic serology*. Ken Konzak, the lab's present-day chief serologist, became its third forensic scientist.

Today the laboratory has five sections and 10 forensic scientists--two forensic chemists in the original *chemistry section*, and four more in the *toxicology section*. The lab has two *forensic serologists* and a *firearm and toolmark examiner*. Bureau Chief Melnikoff also runs a *trace evidence section*. The *administrative staff* includes the state Medical Examiner, who serves as the Administrator of the Division of Forensic Science; the Assistant Administrator, Dawn Kangas; two secretaries, Edna Jovin and Jacki Fick; and Jeanne Williams, evidence technician.

Before the advent of the forensic laboratory and the subsequent Division of Forensic Science, the state's justice system floundered under a staggering backlog of evidence that needed scientific analysis and evaluation. Because the state had no forensic laboratory of its own, local jurisdictions relied on federal laboratories for scientific investigations. By the late 1960's, however, the federal facilities were unable to provide timely service to Montana's local agencies, and costly delays of trials resulted. Several counties faced devastating lawsuits because of inadequate death investigations. The Legislature began to realize that local governments lacked the financial resources to provide the sophisticated scientific investigations that homicides and other complex crimes demand.

In 1969, the Montana Board of Crime Control asked for a detailed study of the need for a full-service forensic laboratory and medical examiner system. Five years later the Montana Justice Project echoed that request, and suggested the establishment of a state Board of Forensic Science. In 1977, after passage of the state Forensic Science Act, newly elected Attorney General Mike Greely appointed that board, using federal grant money made available through the Montana Board of Crime Control to finance its endeavors.

The Board of Forensic Science was a cross section of criminal justice professionals and interested laymen, including a forensic pathologist, a coroner, a sheriff, a police chief, state justice officials, local government leaders and educators. Its mission was to study thoroughly the needs of Montana's many jurisdictions for scientific investigation services, and to recommend how the state should provide those services.

After two years of hard work that included detailed surveys, fact-finding, and seemingly endless hard-nosed analysis and discussion, the Board submitted its findings and recommendations: *Montana needs a state Laboratory of Criminalistics and a medical examiner system.* The Legislature responded with the needed financial support, and in 1980 the Attorney General appointed Montana's first Medical Examiner to head the Division of Forensic Science, the "umbrella agency" for the forensic laboratory and the Office of Forensic Pathology. Today, this combination of agencies provides every service to local departments that the FBI Laboratory provides, except for analysis of questioned documents.

During the calendar year 1985, the state laboratory analyzed more than 3,500 pieces of trace evidence; more than 300 DUI samples; and 656 firearm and toolmark samples. It conducted 1,292 serological examinations. It analyzed more than 200 arson samples, 760 drug samples and 2,500 toxicological samples. In every sense, this is a crushing work load--about 50 samples per day. Since 1981, the volume of evidence flowing into the laboratory has tripled, but the budget has increased by only one-fifth.

A critical aspect of the Medical Examiner's job is providing expert consultation to local coroners and law enforcement during the investigation of deaths. Typically, this consultation includes supervision or assistance in more than 100 autopsies a year. (In 1984, for example, coroners ordered 379 autopsies.) On other occasions, the Office of Forensic Pathology--which is the Medical Examiner's domain--analyzes bones and skeletal remains in order to ascertain whether they are human or animal.

**"Before the advent of the forensic laboratory and the subsequent Division of Forensic Science, the state's justice system floundered under a staggering backlog of evidence that needed scientific analysis and evaluation."**

In November of this year, for example, the Rosebud County Sheriff's Office received a call from a local resident who was remodeling his home and had found a unusual bone in a crawl space under an old foundation. If the bone were human, which would have indicated a "suspicious death," a major excavation of the site would have been necessary to find any additional bones. But on the same day that the Office of Forensic Pathology received the bone from the sheriff, the Medical Examiner determined that the bone was not human, and a call went back to the sheriff with the good news. The county avoided the cost of excavation, and the owner of the home could get on with his remodeling.

Not every case in the life of the Medical Examiner is this routine, and not every case, unfortunately, ends this happily. Very often the Medical Examiner supervises or assists with medicolegal autopsies of homicide victims. The findings of the autopsies invariably contribute to the quality of prosecutors' cases against the perpetrators. The Medical Examiner must bring to bear not only his experience as a forensic pathologist during the investigation phase of a homicide case, but also must present his expert findings to the judge and jury. In many cases, the ME's findings determine whether a homicide has actually occurred, or in other cases, whether less severe charges are in order. The ME's findings establish innocence as well as guilt.

Forensic anthropology is another of the ME's tools in the investigation of suspicious deaths. Montana is fortunate to have the expert help of Charline Smith, PhD, of the University of Montana, who serves as the state's forensic anthropologist.

Dr. Smith's reports are detailed and comprehensive, as any sheriff or police chief who has sent skeletal material for analysis can attest. Suppose that a sheriff sends in a human skull and some other bones that a hunter has found beside a streambed. Dr. Smith takes various measurements of the skull, and feeds the measurements into a computer. The computer compares those measurements with a vast amount of recorded data and determines the likely sex of the skull's owner, along with the owner's age at the time of death, the owner's race and so on.

Comparison of other bone characteristics generates informed conclusions about the individual's stature, and still other measurements reveal the likely thicknesses of skin over the skull, which enable the forensic anthropologist to generate a facial reconstruction that shows quite accurately what the dead person's face looked like. The reconstruction involves application of thin, precisely sliced layers of clay over a cast made from the skull. The thicknesses of the slices correspond to the measurements. After the clay has been smoothed over, and ears and mouth

**"The ME's findings establish innocence as well as guilt."**

sculpted, the reconstructionist adds artificial eyes and maybe a wig to enhance the realism. The result is often startling. The Division of Forensic Science then provides photographs of the reconstruction for circulation to agencies throughout the nation, with the hope that this particular missing person might be recognized. The effort has paid off more than a few times.

In future editions, MJQ will more provide detailed information about the investigative services available from the Montana Division of Forensic Science, as well as advice about how to use those services. Like the other service agencies of the state Department of Justice, the Division exists to serve the needs of local criminal justice agencies. Part of this mission is to *educate* local officers so that they can do their jobs more effectively. Knowledge of the technical aspects of scientific criminal investigations, together with the skills to employ that knowledge productively, are essential tools for today's police officer and prosecutor. Criminals have become sophisticated; the jobs of apprehending and convicting them have become complex. The Division seeks to assist local agencies in coping with that complexity.

# Criminal Investigations

Most crime is against property. Of the serious property crimes, the most frequent are felony theft and burglary. Despite their serious social and individual costs, these offenses have become so commonplace that many citizens regard them as just another irritating feature of everyday life. Even police readily concede that their best efforts seem to have little effect on property crime. A landmark study conducted nine years ago showed that arrests were generally based on factors beyond police control, e.g., the presence of witnesses, or the chance encounter between offenders and patrol officers.[1]

Citizens, consequently, are urged to take defensive measures. Citizens respond to this urging by marking their valuables, installing better locks and lighting, and rigging alarms. They are urged to provide tips to Crimestoppers, and are invited to join groups like Neighborhood Watch. Ironically, these measures, which often have considerable success, depend primarily on the initiative of citizens, not the police.

## by Julius Wachtel

# Property Offender Surveillance:

## A Powerful Tool Against Serious Property Crime

Must we conclude, then, that law enforcement can do nothing on its own against property crime?

The 1960's brought the concept of *team policing*, and the promise of lower crime rates through permanently assigned "community cops." Advances in computer technology during the 1970's allowed police managers to vary deployment patterns according to crime trends; hence, *directed patrol*. At the same time another proactive approach, the so-called "sting" operation, gained popularity. In sting operations, undercover police officers rent storefronts and buy stolen property from local thieves. The transactions are recorded for evidence, and arrests are made later in a massive sweep.

These strategies promised, in part, to reduce crime and enhance the ability of police to apprehend offenders. What they *really* delivered remains uncertain. Team policing may be more a public relations tool than a viable response to crime. Large patrol forces seem more productive than smaller computer-deployed forces, in terms of manhours spent and tasks accomplished. And the vaunted stings, which have yielded numerous arrests, have nonetheless failed to demonstrate a consistent impact on rates of property crime.[2]

Of course, to ask that strategies be evaluated according to their impact on crime may be asking too much. There may be *so much* crime, and *so little* opportunity to do

anything about it, that no preventive effect will be big enough to be statistically significant.[3] Measurable crime prevention, however, is still possible. Arresting active property offenders will prevent crime. There is a catch, however: the period of incarceration must be long enough to prevent the additional "expected" crimes that the arrestee would commit if he were free. If we can estimate the number of crimes that this known offender commits during a given period--say one month--the number of crimes that we prevent is the estimate times the number of months he spends in jail.

This explains, in part, why sting operations may not really prevent crime, because stings generally deal with all comers. Most "customers" are probably opportunists rather than hardened criminals. Their arrest records are often minor, which may lead to lenient sentencing and brief incarceration.[4] So the effect is of questionable value. To achieve measurable effect with our strategy of arresting criminals to prevent their committing crimes, it would be necessary to jail occasional offenders for exceptionally long periods. Why? Because the fewer crimes a person is expected to commit, the longer we must jail him in order to prevent his committing more crimes. Prolonged incarceration of small-time offenders is untenable public policy.

The more reasonable approach is to focus efforts on individuals who have serious records and who are criminally active. If arrested, these individuals are likely to be confined; and their confinement is likely to prevent a great deal of crime. This is not something that stings are likely to accomplish.

But another tactic is available.

In 1975, several communities in the South Bay area of Los Angeles County decided to take a proactive approach to their burglary problem.[5] Their clearance rate for burglary was abysmally low. Everyone knew why: thieves left little physical evidence behind. They were also sneaky, and avoided detection by citizens. Even when arrests were made, there were problems with witnesses and with the identification of property.

The solution was relatively straightforward. Officers and sheriff's deputies collected information on local offenders, and identified those who they believed were active burglars. Then, in a fashion reminiscent of "Candid Camera," they began to shadow their targets. Property offenders were caught in the act of "being themselves." Observation by trained officers of crimes being committed, together with the physical evidence seized on the spot, brought excellent results in court. The defendants could not claim entrapment; they could not argue that they had been "encouraged" to do anything. The quality of the evidence was high, and convictions occured at an astounding rate (an incredible 100 percent in 1982).

The burglary and theft problem cuts across artificial political and geographical boundaries. The manner in which burglaries and thefts are committed remains consistent, wherever they occur. The modus operandi of burglary generally requires that the thief use a private means of transport, usually an automobile. The thief must effect an intrusion into private property, where he must remain for a period of time. The offender must then depart and dispose of the stolen goods. At every step, there is an opportunity to gather evidence through observation. This is as true in Great Falls, Montana, as it is in Redondo Beach, California.

In May, 1984, the Cascade County Sheriff's Office and the Great Falls Police Department formed what came to be known as the "Great Falls Target Team." The team had five experienced officers--a sergeant and two deputies from the Sheriff's Office, and two police detectives from the GFPD. Personnel constraints limited their period of operation to three months. Their methods, goals and objectives were patterned on the South Bay experience. Their mission was to produce an impact on the local burglary and theft problem through the identification, surveillance and apprehension of active property offenders.

Success came immediately. During the first *hour* of surveillance, officers were startled when their target brazenly stole a car battery from a service station. Because the crime was not a felony, surveillance and documentation continued. The target and his companions were observed in the act of numerous misdemeanor thefts and shoplifts during a three-week period. In several cases, officers even watched as stolen property was resold to consumers. Among the numerous items taken were tools, clothing and yard equipment. Victims included several retail store owners, the driver of a service truck and a home owner.

**"Arresting active property offenders will prevent crime."**

At the trial, victims and purchasers testified for the state. The quality and quantity of evidence were unmatched. After less than two hours of deliberation (including lunch), the jury convicted the defendant on every count, including felony common scheme. Because of his extensive record, which includes multiple felony convictions, the target received a sentence of 15 years in prison, plus an additional five years for being a persistent offender. Later, several of his associates were arrested and convicted on related charges.

Now, what about *measurable preventive effect*?

On the basis of prior intelligence and observation, we know that this target committed two or three property crimes each day. If we conservatively estimate a rate of 30 crimes per month, the Target Team can be credited with preventing 360 property crimes for each year that the target remains in prison. Though some of these offenses would have been minor, the target's incapacitation (as the result of being in prison) is unquestionably beneficial to society and to the criminal justice system. Consider all the citizens whom the target will not be able to victimize, and all the crime reports that patrol officers will not need to answer, and all the follow-up investigations that will not be necessary. The benefits are indeed clear.

Experience indicates that property offender surveillance--to be safe and effective--requires no fewer than five vehicles (one each for a supervisor and four officers). For many agencies, this commitment seems impossibly large. One option is to pool officers from two or more

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departments, as the Great Falls community did. Another option is to use the team on a part-time, on-call basis.

To maximize cost-effectiveness, teams can perform a variety of tasks. The South Bay team used its surveillance and teamwork skills to investigate such diverse crimes as murder, armed robbery, insurance fraud and embezzlement. The Great Falls Target Team was called on to assist police officers and sheriff's deputies on numerous occasions. Many law enforcement agencies use multipurpose teams for tasks like surveillance, crime scene investigation, SWAT, drunk driving enforcement, crowd control and disaster management. These teams can provide a prompt and effective response to special enforcement situations, and–if properly constituted--can even cut down overtime costs.[6]

Surveillance teams must use unmarked cars. These vehicles can be rented, leased or agency-owned. Proper insurance coverage is essential.

The most vexing problem is usually radio communications, because portable radios lose their effectiveness inside vehicles. Accessory antennas are usually needed. Magnetic-mount antennas are particularly useful. One trick is to place the base in the trunk and the extend the aerial into the passenger compartment through a hole in the rear parcel shelf. To ensure adequate radio coverage, at least two vehicles should have fixed mobile radios and permanently mounted external antennas (disguised, of course).

**"Then, in a fashion reminiscent of 'Candid Camera,' they began to shadow their targets. Property offenders were caught in the act of 'being themselves.'"**

Proper training is a must. If improperly used or performed, vehicular surveillance can be dangerous, ineffective and unnecessarily intrusive.

To meet the needs of Montana law enforcement agencies, a vehicular surveillance school was developed jointly by the Criminal Investigation Bureau (Montana Department of Justice) and the Bureau of Alcohol, Tobacco and Firearms. Using classroom presentations and realistic field exercises, the five-day program exposes students to a variety of safe and effective surveillance techniques. Among the topics covered in the school are *safety, legal principles, surveillance formations, recognizing observation evidence,* and *targeting offenders.* This final topic is particularly important, because surveillance must not be started without adequate justification.

The course is approved for credit by the Peace Officers Standards and Training Council, and was most recently presented as an external program of the Montana Law Enforcement Academy to officers of Butte-Silver Bow Law Enforcement.

Property offender surveillance is a useful and practical technique. When correctly employed, it offers police the opportunity to take the offensive against serious property crime. The Montana Department of Justice and the Bureau of Alcohol, Tobacco and Firearms stand ready to help local law enforcement agencies implement this powerful weapon in the fight against crime.

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**Mr. Wachtel is a Special Agent with the U.S. Bureau of Alcohol, Tobacco and Firearms.**

## Motor Vehicles

# Odometer Tampering ...is a Crime!

by
Larry Majerus

On October 1, 1985, tampering with a motor vehicle's odometer (mileage indicator) became illegal in Montana, thanks to action by the 1985 Legislature, but the practice is still alive and well in this state. While it has been the subject of many a television comedy sketch--usually featuring a brassy, back-slapping used car salesman in a loud sport jacket--the practice is no laughing matter in the real world.

Odometer tampering is a cold act of calculated fraud. It cheats unsuspecting auto dealers and consumers. It endangers lives by causing people to believe that critical systems like brakes and steering have less wear than they really do.

Montana law defines odometer tampering as removing an odometer from a vehicle, or turning back its numbers to change the reading, except when making repairs or replacements to show a true mileage reading. It is also unlawful to sell, offer for sale, use or install any gadget that causes an odometer to show anything but the true mileage for the purpose of bilking a prospective buyer.

The consumer's best defense against the crime of odometer tampering is awareness.

The first fact to be aware of is simply this: no odometer is tamperproof. Equipped with the right tools, a crafty "spinner" can change a vehicle's mileage in mere minutes. But because the spinner is often in a hurry (and who can blame him?), he will probably leave physical evidence of his skulduggery, like scratches made by his tools, greasy fingerprints and smudges, damaged digits and paint, or misaligned numbers. The wise car buyer will be on the lookout for these clues, and so will the wise law enforcement officer. Helpful devices for corroborating odometer mileage include oil-change stickers, warranty maintenance certificates, receipts for repair work and other documents that record mileage at certain dates.

Most experienced spinners use tools that they have designed themselves, the most common of which resembles a bent screwdriver that enables its user to turn the left-most odometer number forward or backward. Very few spinners remove the odometer unit to disassemble it, thus gaining access to the number drums. Too much trouble. Too time-consuming.

Odometer readings are important determiners of vehicles' resale value, and the value of a typical car goes up $200-$500 for every 10,000 miles that a spinner takes off the odometer. Tampering costs consumers and dealers more than $2 billion a year, a bleak reality that has generated vigorous enforcement efforts in many jurisdictions. Predictably, spinners have moved to those jurisdictions where enforcement is lax, where the resources for prompt investigation are scarce, where the costs of prosecution are high.

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In Montana, odometer tampering brings a citation under section 61-3-607, MCA. Subsequent conviction can bring a jail term of up to six months and a fine of up to $500, or both. Federal law makes the culprit liable for restitution to the damaged buyer, in an amount of $1,500 or equal to *triple damages*, whichever is greater, plus attorney fees.

Montana law also requires certain documentation to record the transfer of ownership of any motor vehicle, and the odometer reading is an important part of that documentation. The seller must record the current odometer reading on the certificate of ownership before signing any document that transfers the ownership to someone else. If the certificate of ownership does not provide a space for recording the mileage reading, the buyer must provide a written statement to the Montana Motor Vehicle Registrar's Bureau--signed by the seller--that contains the following information:

–The odometer reading at the time of the transfer of ownership.

–The date of the transfer of ownership.

–The seller's name and current address.

–The vehicle make, model year, body style and identification number.

–Certification that the odometer, to the best of the seller's knowledge, reflects the actual distance in miles or kilometers that the vehicle has been driven; or a statement that the odometer reading shows the mileage in excess of the designed mechanical limit of 99,999 miles or kilometers; or a statement that the seller knows the odometer to be incorrect because of calibration error or accidental damage, and that it cannot be relied upon.

The provisions that require odometer readings do not apply to motor vehicles that are older than six years, or to those that are not self-propelled, or to brand-new vehicles that dealers transfer to other dealers before the first retail sale (except for "demonstrators," which *are* subject to the odometer provisions).

## "Odometer tampering is a cold act of calculated fraud."

Investigators and prosecutors can look to still more state laws to combat tampering. Among these are the statutory prohibition against altering a motor vehicle "certificate of ownership," or *title*, and the state general fraud statute.

The Motor Vehicle Division title has a space for the odometer reading, and an alteration of this important disclosure through tampering is a violation of section 61-3-603, MCA, which carries a penalty of imprisonment for up to 10 years and a fine of up to $5,000. Montana's general fraud statute prohibits "deceptive practices" under section 45-6-317, MCA, which covers the practice of odometer tampering. Contractual obligations under the civil law (Title 28, Chapter 2, MCA) offer yet another angle of legal attack against the spinner.

## "The consumer's best defense against the crime of odometer tampering is awareness."

In response to the most recent legislation, the Motor Vehicle Division maintains a record of odometer disclosures, thus providing mileage histories for use in substantiating or corroborating odometer readings. The Division returns out-of-state titles to their original issuing agencies for examination and authentication, and promptly reviews those titles surrendered to Montana for the same treatment. The Division scrutinizes all odometer recordings for evidence of erasure and alteration. Now under review by Division management is the possibility of using computers to detect odometer discrepancies in the records of ownership transfers.

The real battle against odometer tampering must occur at the local level. The "good guys" in this battle are the honest car dealers, auction operators and rental outfits who have the greatest likelihood of encountering suspicious vehicles and sellers. The Attorney General and the Motor Vehicle Division encourage all the "good guys" to be on their guard, and to report any suspicious activity or merchandise to law enforcement. Police and prosecutors should urge those who have become victims of the spinners to pursue every available remedy under criminal and civil law, not only to recover the amount of damage, but also to end the careers of the spinners.

**Mr. Majerus is the Administrator of the Motor Vehicle Division, Montana Department of Justice.**

## For the Prosecution

# Montana's New Discovery Law

by Marc Racicot

Discovery refers to that legal process by which one party to a case secures information about the case from the other party before trial. The discovery rules applicable to civil cases allow the parties to a lawsuit to have equal access to information that either possesses. Montana law did not provide this kind of reciprocal discovery in criminal cases until October 1, 1985, when Senate Bill 90, enacted by the Forty-Ninth Legislature, became effective.

Reciprocal discovery in criminal cases furthers the interests of justice. Reciprocal discovery reduces surprise; leads to full disclosure of all the facts; aids in arriving at the truth; promotes a balanced adversary process; avoids unnecessary delay; and enhances the integrity of the judicial system. Reciprocal discovery is good for Montana's criminal justice system.

With passage of Senate Bill 90, Montana has for the first time a precise statutory scheme that provides for discovery in criminal cases on a reciprocal basis. Pursuant to Senate Bill 90, which appears in sections 46–15–321 through 46-15-332, MCA, both the prosecution and the defense have specific discovery rights and disclosure obligations.

In the past, Montana has not had a uniform set of rules that govern discovery in criminal cases. Before the enactment of Senate Bill 90, the discovery statutes provided some sense of direction, but were outdated and vague. They were also confusing, because the Legislature had amended them on numerous occasions, and the Montana Supreme Court had supplemented them with several decisions.

Senate Bill 90, however, establishes a consistent and clear pretrial discovery procedure for criminal cases. More important, it makes the discovery procedure in criminal cases a "two-way street" by requiring disclosure of information before trial by both the prosecution and the defense.

Passage of Senate Bill 90 substantially enlarges the disclosure responsibilities of the prosecutor. Contrary to the old disclosure rules, Montana prosecutors must now provide full discovery upon arraignment in district court, or at a later date to be specified by the court upon a showing of good cause, even in the absence of a request by the defense to do so. Previously, in the absence of a defense motion that requested additional discovery, the prosecutor was obliged to furnish only the names and addresses of prosecution witnesses. These days, the prosecutor must make available at the arraignment not only a list of witnesses to the defendant, but also the witnesses' written or recorded statements, together with all written or oral statements of the defendant or a codefendant; the names and addresses of experts and the results or reports of their examinations, tests, experiments or comparisons; a list or copy of all papers, documents, photographs or other objects that will be used at trial, or were obtained from or alleged to belong to the defendant; and all information or material that tends to mitigate or negate the defendant's guilt or possible punishment.

At arraignment the prosecutor must also tell the defendant about any electronic surveillance of any conversation to which the defendant was a party; whether a search warrant has been executed in connection with the case; whether the case has involved an informant, and if so, the informant's identity (if the defendant is entitled to have that information).

**"Senate Bill 90...establishes a consistent and clear pretrial discovery procedure for criminal cases."**

Senate Bill 90 also commands the prosecutor to make items of evidence available to the defendant for examination, testing or reproduction upon his or her request. Under the old discovery rules the defendant was normally required to obtain a court order before examination, testing or reproduction was permitted.

Before the enactment of Senate Bill 90, the prosecutor was obliged to provide–no later than five days before trial–a list of witnesses whom he or she intended to call in rebuttal of evidence of certain enumerated defenses. Senate Bill 90 expanded that requirement to include not only a list of rebuttal witnesses, but also copies of their statements.

Senate Bill 90 excludes the prosecution's work product from discovery unless it contains exculpatory information. In that instance, the prosecutor must disclose that exculpatory information. The new law does not define *exculpatory information* or *work product*. The term *work product*, however, generally means legal research, records, correspondence, reports and memoranda, to the extent that

these contain the opinions, theories and conclusions of the prosecutor and investigating officers.[1] *Exculpatory information* generally means evidence favorable to the defendant.[2] This disclosure requirement, although articulated in several court decisions, was not specifically mentioned in Montana's discovery rules before passage of Senate Bill 90.

The new discovery law also clearly delineates and enlarges the defendant's pretrial disclosure obligations. Just as prior law provided, Senate Bill 90 requires the defense to give written notice to the prosecution that the defendant intends to introduce evidence in support of certain enumerated defenses, and to provide a list of the witnesses to be called in support of such a defense. Senate Bill 90, however, changed this defense discovery obligation in one important aspect: it expands the number of defenses that require notice before supporting evidence may be presented at trial.

## "More important, it makes the discovery procedure in criminal cases a 'two-way street'..."

Under the old law, the defenses that required notice were self-defense; entrapment; compulsion; alibi; and mental disease or defect. The new law includes all these and adds the defenses of good character and mistaken identity.

The most significant disclosure obligation placed upon the defense by Senate Bill 90 is the requirement to make available to the prosecution a list of all persons, other than the defendant, who will appear as witnesses at the trial, along with copies of these witnesses' statements; a list of experts who will appear at trial, together with the results and reports of their examinations, tests, experiments, or comparisons; and a list of all papers, documents, photographs and anything else that the defense will use at trial.

This new discovery procedure clearly expands the disclosure obligations of the defense. Although it imposes the same responsibilities on the prosecution, opponents of the new process have made themselves heard, and will undoubtedly continue to do so.

Opponents have two main complaints.

The first complaint is that mutual discovery procedures like those in Senate Bill 90 violate the defendant's privilege against self-incrimination. This complaint, however, centers on a misapprehension. Senate Bill 90 is based on the Arizona law that governs discovery. The Arizona statute that requires disclosure by the defendant has been tested in court and found to be constitutional.[3] The United States Supreme Court has also held that reciprocal discovery procedures are legally and constitutionally well-founded.[4]

Senate Bill 90, like the Arizona law, does not violate a defendant's privilege against self-incrimination, because it does not compel the defendant personally to reveal or produce anything. The defendant need not inform the prosecution whether he will be a witness; and he need not provide the prosecution with any statement that he may have made. Similarly, the work product of the defense is not subject to disclosure. Because a defendant need not disclose anything personally, the privilege against self-incrimination is not offended.

The new discovery law regulates only the *timing* of the disclosure. It requires disclosure *before* trial of information that would come to light at some point anyway. The only potential loss to the defendant is the tactical advantage of taking the prosecution by surprise, which ultimately is not much of an advantage, considering the high probability that the prosecution would seek a continuance to prepare rebuttal.

The opponents' second complaint about reciprocal discovery is that it distorts the adversarial balance between the prosecution and the defense. This argument suggests that because the prosecution can discover evidence through the investigative resources of law enforcement (who have the ability to make reasonable searches and seizures), the prosecution neither needs nor deserves any pretrial disclosure of information from the defendant.

Parenthetically, this argument ignores the fact that Senate Bill 90 requires everything that the prosecution discovers to be made available to the defense. More important, the argument suggests that the "sporting theory of justice," which holds that the trial is viewed as a *game* rather than a search for the truth, has a legitimate place in the justice system. Quite the opposite is true. The elements of surprise and gamesmanship that are hallmarks of the "sporting theory of justice" produce little more than delay, confusion and wasteful consumption of valuable public resources.

In a criminal case neither side has a *legitimate* interest in denying or delaying access to all available evidence that sheds light on the issues of guilt, innocence and punishment. If the trial of a criminal case is to be a search for the truth, and if its purpose is to convict the guilty and acquit the innocent in a fair, impartial and orderly manner, then discovery rules should be applied--within constitutional limitations--equally to the prosecution and the defense. Senate Bill 90--sections 46-15-321 through 46-15-332, MCA--does exactly that.

REFERENCES

[1]Rule 15.4 (b) (1), Arizona Rules of Criminal Procedures.

[2]*Brady v. Maryland*, 373 U.S. 83 (1963).

[3]*State v. Fendler*, 622 P.2d 23 (Ariz. App. 1980), *cert. denied* 452 U.S. 961; *State v Talley*, 540 P.2d 1249 (Ariz. 1975).

[4]*Wardius v. Oregon*, 412 U.S. 470 (1973); *Williams v Florida*, 399 U.S. 78 (1974).

**Mr. Racicot is chief of the County Prosecutor Services Bureau of the Montana Department of Justice. The Bureau assists county prosecutors with major felonies, and coordinates training activities for the state County Attorneys Association.**

## Fire and Arson

# New Measures Against Arson

**by Robert Nieuwenhuyse**

In 1984, Montanans reported 5,340 fires. Of these, more than 1,200 were "incindiary incidents," or arsons. During that same year the dollar loss that fires inflicted on Montana's citizens was more than $10.3 million. Arson accounted for 29 percent of that loss, or a total of nearly $4.2 million.

These dollar figures reflect only the *direct losses* that people suffered. The *indirect losses*, though more difficult to add up, are no less real: lost jobs in many cases; lost income; loss of tax revenue to communities and to the state; and, in cases of particularly devastating fires, lost businesses that cannot reopen.

The Montana Fire Marshal Bureau recently undertook a careful analysis of the state's arson problem, using information from the Fire Incident Reporting System, local law enforcement agencies and the fire services. This analysis incorporated an inventory of the Fire Marshal Bureau's capabilities in manpower, computer power and budget. The conclusion: without substantial help, the Fire Marshal Bureau can increase its services to local agencies by only a small fraction, even though the problem demands a much bigger effort.

That was the bad news.

The good news is that the Bureau developed a four-point program to combat arson, a program that qualified for federal support through the Montana Board of Crime Control (MBCC). In early 1985, the Bureau submitted an application for a federal grant to pay for 50 percent of that four-point program, and thanks to the efforts and concern of the MBCC members and staff, that application received approval.

The four-point program is very straightforward.

*Point one:* Establish a computerized data base that gives information on potential arson targets. That data base should also enable investigators to develop profiles of fire setters; it should show patterns of arson crimes; and it should reveal the movements of known fire setters.

*Point two:* Reactivate those local arson investigation teams that are presently out of commission.

*Point three:* Sponsor a greater number of Advanced Arson Investigation schools for law enforcement agencies, fire service people and arson investigation teams in particular.

*Point four:* Set up an Arson Investigation Advisory Committee whose membership includes professionals who serve in law enforcement and the fire service. The Committee's job is to advise state and local public safety agencies on all matters that involve the fight against arson, and to encourage coordination of regional and statewide efforts.

Each of these four points deserves further explanation.

*Point one* recognizes that good information is the cornerstone of any successful enforcement strategy. A computerized data base is the way to meet the critical need for good information. Using the data base, the Fire Marshal Bureau will determine which areas of the state need arson investigation teams but have none. The data base will provide comparisons that enable the Bureau to prioritize the reactivation of inactive teams. And the data base will assist local law enforcement agencies and fire service people in analyzing their own fire problems and response strategies.

The mechanism is already in place for gathering the statistics that will make up the data base--the Montana Fire Information Reporting System (MFIRS), which is the Fire Marshal Bureau's statewide reporting system. The computer program, when complete, will allow statewide dissemination of the statistical data, together with helpful analysis, for use by local agencies.

In today's mobile society, a chronic fire setter has no trouble moving around to new communities to escape the "heat" that he has generated by committing arsons. He often uses an unvarying, personalized method of operation that a computer can easily keep track of, assuming that accurate statistical reporting occurs as planned. The data base will supply reliable, up-to-the-minute information that reveals *patterns* in the record of suspicious fires--like multiple fires at one location, or those that involve more than one piece of property belonging to one owner. The data base will also assist law enforcement and the fire services in keeping track of patterns of incendiary activities that typify known

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terrorist organizations and subversive groups.

One of the most attractive features of this new system is that it will be more accessible to local fire services and law enforcement agencies, which is appropriate not only because they feed the system through the MFIRS, but also because many local agencies have begun to use computers for their own purposes. These purposes include *reporting activities*, *record keeping* and *investigation management*.

The Fire Marshal Bureau has purchased the computer and software that it needs to operate the system. Its capabilities now serve the critical need for good information, which is the cornerstone of a successful investigation strategy--i.e., determining likely arson targets, finding patterns in similar arson incidents, revealing the movements of known fire setters, and evaluating the effectiveness of arson investigations and training.

**"In today's mobile society, a chronic fire setter has no trouble moving around to new communities to escape the 'heat' that he has generated by committing arsons."**

*Point two* of the program recognizes the value of arson investigation teams.

Establishing these teams in local communities has been a high priority of the Attorney General and the State Fire Marshal for years, and the Fire Marshal Bureau's efforts to form such teams have been remarkably successful. The team concept rests on the assumption that arson investigation requires coordinated, productive efforts by law enforcement, the fire services and prosecutors. The concept also recognizes the inherent *differences* among these personnel--differences in training, expertise, methods and priorities. In short, the team concept brings the various strengths of each element to bear on the problem of arson. Operating as a cohesive unit, the team determines the cause and origin of a fire; if the fire falls into the category of "incendiary incident," the team proceeds with a criminal arson investigation.

The 29 arson investigation teams around the state have acquitted themselves well. In some communities, however, turnover in personnel and new job assignments have broken the teams up, and have rendered them inactive. The Fire Marshal Bureau's new arson program seeks to revive those teams that have fallen into inactivity. That effort includes attempts to motivate former team members, encourage agency administrators to make the teams a high priority, and recruit new members from the ranks of law enforcement and the fire services. The Bureau also appreciates the importance of including county attorneys' offices into the team framework, in order to ensure that the teams' activities contribute to successful arson prosecutions.

As it has always done in the past, the Bureau will assist and support local law enforcement and fire service agencies in every possible way, whether or not they have functional arson investigation teams in place.

*Point three* of the program arose out of the Bureau's recognition that investigators need more advanced training in arson investigation. To some extent this aspect of the program is already reality. For years the Bureau has helped the Montana Law Enforcement Academy conduct the Basic Arson Investigation Course and the Advanced Arson Investigation Course. The latter course gives students detailed knowledge of the more technical aspects of arson investigation.

The Basic Arson Investigation Course includes six specific areas of instruction: (1) Motivation of the fire setter; (2) Determining the fire's point of origin; (3) Causes of fires (accidental and incendiary); (4) Fatal fires; (5) Vehicle fires; (6) Legal aspects. After having had exposure to these important subjects, the student must complete a two-day Basic Fire and Arson Detection Course as a prerequisite to the Advanced Course.

The Advanced Course features little time in the classroom. Rather, the instructor divides the class into investigation teams, and takes the teams on a step-by-step field exercise that is really an investigation of a "set" fire. The exercise requires the teams to determine the cause of the fire, using proper practices and procedures. An important part of this exercise is to demonstrate the value of the team concept, bringing the team members' differing skills to bear in processing the crime scene, gathering evidence, taking photographs and diagraming.

Determining the cause and origin of the fire is the first step. The discovery of arson launches further investigation. The course work employs role players who act the parts of witnesses, suspects and fire fighters. Realistic interviews and interrogations take place, the investigation matures and the criminal arson case shapes up.

The culmination of each team's arduous investigation and preparation is a mock trial on the final day of the course. The instructor selects one team to present its case, aided by the actual local prosecutor, a real district judge and a defense attorney.

Valuable as the Advanced Arson Investigation Course is, it requires elaborate planning, logistical work and preparation. In the past, the Fire Marshal Bureau has handled the jobs of lining up role players and local officials to assist in presentations; finding suitable structures in which to demonstrate set fires; and preparing the academic content. Doing these jobs has severely taxed the Bureau, and the prosepect of *increasing* the number of courses was unrealistic in view of scarce resources in budget and personnel. The federal grant, however, has enabled the Bureau to enter into a contract for the services of an

experienced professional to do these important jobs. During 1986, thanks to the federal help, the Bureau will sponsor *five* additional Advanced Arson Investigation Courses, greatly reducing the shortfall in knowlegeable arson investigators throughout Montana.

The final point in the new fight against arson, *Point four*, is formation of a statewide Arson Investigation Advisory Committee. The Fire Marshal has asked each of the state's three major public safety associations--the Police Chiefs Association, the Sheriffs and Peace Officers Association and the Fire Chiefs Association--to select three active members to serve on the panel. In addition to the general duties mentioned earlier, the Committee will have the job of developing response criteria for local arson investigation teams, and if the Committee deems it necessary, for a *state* arson investigation team. The Bureau will promulgate these criteria statewide in the hope of generating yet more impetus to reactivating defunct teams and formation of new ones where they are needed.

The Committee will also monitor and evaluate the performance of the Fire Marshal Bureau's overall arson program, and will assist the Bureau in modifying or expanding the program as new needs and realities become apparent. During its first year of operation, the Committee will meet twice.

The Attorney General and the State Fire Marshal have recognized the sad fact that economic hardship has visited Montana, bringing increases in bankruptcy, more business failures and higher unemployment. These ills are the harbingers of arson and insurance fraud. A diligent and hard-hitting program of arson investigation, however, can minimize the inevitable outbreak of incendiary incidents. Incentive to forfeit arson as an economic remedy results from well publicized arson convictions. Deterrence is the key.

Effective enforcement, however, cannot be sporadic or isolated to a few communities or regions. It must be statewide. It must be the effort of state and local agencies working in coordination. Effective arson enforcement relies on knowledge, use of good information and efficient organization. The Fire Marshal Bureau's new arson program emphasizes all these.

**"The Attorney General and the State Fire Marshal have recognized the sad fact that economic hardship has visited Montana, bringing increases in bankruptcy, more business failures and higher unemployment. These ills are the harbingers of arson..."**

Mr. Nieuwenhuyse is a Deputy State Fire Marshal.

Traffic Enforcement

# THE GRAY MARKET

Captain Jerry S. Wilkerson, MHP
Lieutenant Stephen R. Barry, MHP
Sergeant J. Michael Frellick, MHP

The American "gray market" is a marketplace where more and more car buyers are going for "deals" on luxury European models. The term applies to cars that manufacturers did not originally intend to be sold in the United States, and includes such makes as Mercedes-Benz (which accounts for about 60 percent of the entire gray market), BMW, Porsche, Audi and others.[1]

The National Highway Traffic Safety Administration estimates that 48,000 gray market cars entered the country in 1984. The Environmental Protection Agency says that the number jumped to 60,000 in 1985, and predicts that it may *double* in 1986.[2]

State and federal enforcement officials have begun to look closely at methods of identifying these vehicles to ensure that they receive proper registration and titles, and that they have the equipment that federal and state laws mandate. Many gray market cars are previously owned, and some are older models, meaning that they do not meet federal Department of Transportation (DOT) safety regulations or the emission standards set by the Environmental Protection Agency (EPA).

Learning to identify gray market vehicles is important to enforcement officials who may encounter them on the road, and to motor vehicle officials who must regulate their registration and titling. Montana is among many states that have recently experienced a dramatic influx of these cars, so Montana's enforcement officials at both the state and local levels must be informed and vigilant in order to ensure proper regulation.

Some popular foreign cars like Mercedes-Benz and BMW conform to many of the Federal Motor Vehicle Safety Standards (FMVSS), but other vehicles require extensive modification to achieve compliance with those standards. In order to complete a gray market conversion, some cars must meet as many as 38 separate safety standards, depending on the year of manufacture.[3] For some unique vehicles, compliance with all federal safety standards is impossible,

simply because mechanical conversion is impossible.

Traffic enforcement officers should learn to look for the obvious indications that a vehicle does not comply with the federal standards. These indications include the following:[4]

--Lack of specifications on the window glass.

--Lack of the required antipollution devices and vehicle emission control stickers.

--Absence of front and rear side marker lamps.

--Small European-style bumpers on the front or rear.

--Lack of UNLEADED FUEL or DIESEL stickers near the fuel cap and on the dashboard.

--Absence of the sealed beam headlamps that the United States government requires, or the presence of European-style "bulb" lamps.

--A vehicle identification number (VIN) that the manufacturer has not applied.

The International Association of Chiefs of Police recently acted upon the need for standardized makeup and placement of VINs on gray market cars. The Association approved a resolution that calls for amendments to the federal administrative rules--amendments that would establish such a requirement--and sent the resolution to the National Highway Traffic Safety Administration. Standardized VINs would reduce the civil liability that a law enforcement officer might incur in detaining or seizing a vehicle on suspicion that it has a bogus VIN.

**"Traffic enforcement officers should learn to look for the obvious indications that a vehicle does not comply with the federal standards."**

Presently, Montana has within its borders no conversion shop that is capable of providing EPA- and DOT-approved conversions of gray market vehicles, and no shop that can certify compliance of a gray market vehicle. The certified conversions that Montana enforcement officers see most often are from shops in Texas, California and Nevada. Depending on the type of vehicle to be converted, the process costs from $4,000 to $10,000, and--as one might expect--the quality of conversions varies among shops.

Low-quality conversions can be costly and dangerous.

A car dealer in Montana recently encountered a gray market car with an improperly installed catalytic converter. Someone had attached the device without allowing sufficient clearance for cooling. Consequently, heat built up during operation, actually causing the carpet to smolder in the interior of the car. The car dealer warned against such "quick jobs" of gray market conversion, especially those that cannot meet federal requirements--like *this* one.

Arnold Schlegal, a U.S. Customs Service officer in Great Falls, says that Americans buy gray market cars because the price seems right, compared to the prices of cars manufactured specifically for the U.S. market. In patronizing the gray market, customers can often obtain higher performing automobiles, because federal standards and requirements often reduce performance.

A recent *Wall Street Journal* advertisement listed a 1985 Mercedes-Benz 500 SEL as a gray market vehicle, complete with conversion, shipping and duty charges, for $41,900. This same model of automobile, in the edition manufactured for the U.S. market, would cost about $52,000, or more than $10,000 higher. Without question, the gray market alternative offers a substantial savings, assuming that the conversion process is high-quality and that it results in a product that compares favorably to the U.S. market edition of the same car. This assumption looms large, considering the problems a gray market customer may have, problems that may not be insurmountable, but can nonetheless be costly and time-consuming.

The process of titling a gray market vehicle can be difficult, if for some reason the required paperwork is not available. Many of the 40 or more gray market title applications that are presently pending at the Motor Vehicle Registrar's Bureau have been in limbo for up to nine months, says Daryll E. Schoen, the Bureau Chief. The reason? The gray market purchasers did not obtain all the required documentation before taking possession of their vehicles.

Obtaining a title for a gray market vehicle requires five specific documents, advises Bureau Chief Schoen:

--A title from the country of origin.

--A notarized bill of sale from the previous owner(s).

--U.S. Customs documents that show the status of compliance with federal standards; and certification of posting a compliance bond.

--A Vehicle Identification Number inspection certificate issued by a peace officer.

--Written releases from DOT and EPA that show compliance with federal safety and environmental regulations.

The time frame for obtaining compliance releases from EPA and DOT is two to six months. Upon receiving all five documents, the Montana Motor Vehicle Registrar's Bureau will immediately issue a title for a vehicle, says Schoen. An additional problem emerges, however, if the purchaser needs a loan to buy a gray market car, because the Bureau cannot record a lien against the car until the title-issuance process is complete. Without a lien, a commercial loan is often out of the question.

Some gray market buyers may also have trouble getting maintenance and repair service for their cars. A recent survey of five Montana car dealers (representing BMW, Porsche and Mercedes-Benz) revealed that four of the five would not perform warranty work on gray market cars. Two of the five refuse to perform *any* service work at all, even routine maintenance. Though a dealer's actual legal obligations to do warranty repairs and maintenance may vary, depending on the kind and quality of gray market conversion that has occurred, dealers are reluctant to work on some gray market cars because the conversions have used

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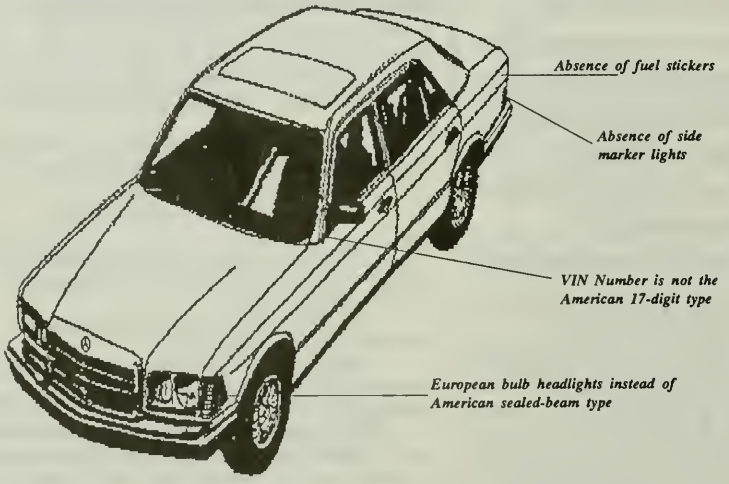
nonstandard parts which may not be readily available, or because the conversion lacks an accompanying technical manual to help service mechanics.

One dealer said that he would "stay away" from any service business on gray market cars because of a "liability problem," a concern that arose from the considerable number of gray market customers who had consulted his service shop. Some of these owners' cars, he said, could not meet federal safety and environmental standards because of improper conversions.

Gray market cars must clear U.S. Customs before new owners or brokers can take possession. The Customs Service entry process establishes whether a car meets DOT and EPA requirements. If a car does not comply, its owner must post a *compliance bond* in an amount that equals the purchase price of the car, says Customs Service Officer Schlegal. After posting the bond the owner or importer may then take the car home or to a conversion shop. Until the needed modifications have occurred, however, and the EPA and DOT have issued their written releases, the owner or broker may not drive the car, offer it for sale or sell it. The Customs Service will refund the compliance bond when it receives the releases from EPA and DOT. The car is then ready to be driven or sold.

**"The process of titling a gray market vehicle can be difficult, if for some reason the required paperwork is not available."**


Absence of fuel stickers
Absence of side marker lights
VIN Number is not the American 17-digit type
European bulb headlights instead of American sealed-beam type

**Law enforcement officers should check for these 'Gray Market' indicators.**

Schlegal noted that EPA allows a one-time, lifetime exemption from emissions standards for importers who bring in vehicles that are older than five years. A vehicle thus exempted cannot be sold for one year after import. This exemption does *not* apply to the DOT standards that were in place at the time a vehicle was

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manufactured.

Montana law does not presently address gray market vehicles specifically, and the federal statutes that govern environmental and safety standards are not enforceable by Montana law enforcement officers. U.S. Customs Officer Schlegal says that his agency will provide consultation to state and local officers on matters involving gray market vehicles, and will try to answer any questions that may arise.

The Customs Service has seized four gray market BMWs and Porsches in Montana's neighboring state, Idaho, and is holding these cars under federal authority. Their owners are awaiting trial for customs import violations, which is no laughing matter. The penalty for violating customs laws can be severe, says Schlegal–up to five years in federal prison and a $10,000 fine for each incident. A conviction can also bring a civil penalty that includes forfeiture of the vehicle and a fine equal to its value.

The American Association of Motor Vehicle Administrators has appointed a committee to study the many policy issues and problems that surround the gray market phenomenon. Chaired by Montana's Motor Vehicle Division Administrator Larry Majerus, the committee has undertaken to draft standardized rules and criteria for handling gray market cars–mainly identifying them and providing them titles. Too, the National Highway Traffic Safety Administration and the EPA have begun to study the practicability of federal standards as they apply to gray market cars, not only with respect to the effects of those standards, but also to their enforceability. Knowledgeable observers expect rule changes from DOT and EPA in the near future.

State and local enforcement officers in Montana will likely receive questions about the gray market from well-meaning citizens. Officers themselves may confront enforcement decisions. For information about any aspect of the gray market phenomenon, call or write to any of the following agencies:

–Montana Motor Vehicle Division, Department of Justice
303 Roberts
Helena, Montana 59620
(406) 444-4536

–Montana Highway Patrol Division, Department of Justice
303 Roberts
Helena, Montana 59620
(406) 444-3000

–United States Customs Service
Federal Building, PO Box 71
Great Falls, Montana 59403
(406) 727-8750

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[1]*California Highway Patrol Training Bulletin*, Series 1, Bulletin 1, (September 10, 1985), p. 1.

[2]"Detroit Report: Gray Market Grumbles," *Popular Science*, (December 1985), p. 14.

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[4]*Ibid.*

**Captain Wilkerson, Lieutenant Barry and Sergeant Frellick are officers of the Montana Highway Patrol Division.**

Identification

# Justice at the Fingertips

Mike Miller

*Consider the tip of the human finger.*

*Notice the well defined ridges that enable human beings to grip objects, much the same way that a tire grips the road because of the grooves in its rubber surface. The patterns in those "friction ridges" are unique to their individual owners. No two humans have an identical fingerprint.*

*And because of this happy fact of life, fingerprints are a nearly infallible means of identifying individual human beings.*

When most people hear the term "fingerprint," they think of murder mysteries, detectives and crime labs. Most people don't realize that fingerprints are also important features of realms outside the criminal justice system. What better way is there to identify the amnesia victim who cannot remember his own name? Or the unidentified deceased person? Or the newborn infant in a hospital? Or the person who seeks entry into a nuclear missile silo?

Current technology enables a person to gain entry into his home, office, or any secured area (including his Italian-made sports car, for example) by placing his finger on a surface that is touch-sensitive, having his fingerprint computer-scanned and compared to electronic records of admissible identities, and having the lock open to him like magic--all in less time than the telling takes. Researchers have also started looking into fingerprint characteristics that give clues about propensities toward various diseases and illnesses, meaning that fingerprints may someday become important diagnostic tools.

In the world of criminal justice, the "inked" fingerprint helps solve crime. It can establish guilt or innocence, depending on where its owner has left his own individual set of patterns.

The term "inked" fingerprint usually means an impression taken from the first joint of the finger, stretching from one edge of the cuticle around to the other edge of the cuticle. The pattern of *friction ridges*, however, can be found elsewhere on the finger, over the entire surface of the palm (*palmar surface*), on toes and on the soles of feet. In humans the friction ridges are both individual and permanent, unlike the grooves in tires. They form during the third month of gestation, and normally remain unchanged, despite incredible wear and tear--even after death, or at least until the flesh decomposes. *Individuality* and *permanence* are two factors upon which the science of fingerprint identification is based; together they provide for positive fingerprint identification.

The friction ridges, which measure 1/15th to 1/25th of a millimeter in width, form patterns--*loops*, *whorls* and *arches*--that lend themselves to classification, or filing sequences. Within the patterns are minute characteristics, like *dots*, *islands*, *bifurcations* and *ending ridges*, that allow positive identification.

When the Montana Criminal Identification Bureau receives a fingerprint from a local law enforcement agency, a Bureau technician searches the fingerprint file by the individual's name, date of birth and other descriptors in order to verify identity. If that search is unsuccessful, the technician must then classify the print (or prints) and assign a filing sequence number. This process involves assigning values to the pattern on each finger for which the Bureau has a print, according to a process called the *Henry Classification System*. A classification number--a numerator-denominator equation--is then assigned; the Bureau searches the fingerprint card file "by minutia," examining all entries that have a similar classification number, i.e., those that represent fingerprints with similar enough characteristics to make the search manageable. In other words, the system enables the Bureau to eliminate a vast number of prints at the very beginning, focusing the search in that category of print that is likely to yield a match.

If the owner of the prints (the "subject") is represented in the Bureau's files because of previous involvement with the criminal justice system, his or her identity will come to light through means of this search. Upon finding a "hit," the Bureau assigns another sequence number to the newly identified prints, which is the National Crime Information Center number, for the simple reason that the Henry Classification System is not compatible with the NCIC System, which uses a 20-character straight-line bar configuration to classify prints. Using the NCIC number and several other descriptors, the Bureau can perform a nationwide search of files that record the identities and aliases of wanted individuals, a process that may take only a few minutes, thanks to electronic communication and the ingenuity of the classification system.

In order to be effective the Henry Classification System and the NCIC System both depend on *precise* and *complete* information about the individual fingerprints. Incomplete or incorrect information will defeat either

system. Thus, the quality of the inked fingerprint is the first consideration. The operator who takes that fingerprint from the subject is the key to success.

To be classifiable, and therefore effective, the inked fingerprint card must meet three requirements.

First: *It must show the ridge patterns in black against a white background.*

Second: *It must show the entire pattern area,* allowing pattern interpretation by the Identification Bureau.

Third: *It must show prints from all ten fingers, taken in proper sequence.*

At the bottom of the fingerprint card is a space for simultaneous impressions, or "taps," as many call them. Analysts use these to determine whether the "rolled

**"In the world of criminal justice, the 'inked' fingerprint helps solve crime. It can establish guilt or innocence, depending on where its owner has left his own individual set of patterns."**

impressions" are in the proper sequence. Check the first illustration on the reverse side of the FBI fingerprint card, under *Guidelines for Obtaining Classifiable Fingerprints*, for a good explanation of taps.

Three conditions determine whether a set of fingerprints is classifiable. The first is the condition of the equipment used to take the prints. The second is the condition of the fingerprint donor. And finally, perhaps most important, are the skills and integrity of the operator, the officer who takes the prints.

The best equipment for taking fingerprints is both simple and cheap--printer's ink and a glass or stainless steel slab onto which the ink is rolled in a thin film. Other methods and equipment, to be sure, are available, like special pads, chemically sensitive print cards and various inkless methods. These may be cleaner and more convenient, but they are neither as versatile nor cost-effective as the old-fashioned way. Notwithstanding convenience and cleanliness, the *only* acceptable methods and equipment are those that produce *black ridges on a white background.* Needless to say, make certain that fingerprint equipment and materials are clean and in good repair.

Now, about the condition of the donor. Sex and age are major considerations: most adult females and youths have friction ridges that are finer and closer together than those of adult males. This means that the officer who takes the prints must account for variations in how different people's prints come out. Experiment with the amount of ink applied to the fingers, and vary the pressure when taking the prints. If the donor has wet hands, have towels available for drying, because the ink probably will not adhere properly to wet skin. On the other hand, extremely dry skin probably will not produce good prints, so have some hand cream or skin conditioner available to remedy this problem. When the condition of the donor prevents taking prints of all digits (like injury, deformity or amputation), make notations in the appropriate finger blocks of the card.

Do not overlook the physical, emotional and mental states of the donor. Bear in mind that many people consider fingerprinting a very "personal" thing, and they become uneasy over the prospect of such close personal contact. Enforcement officers themselves often become uncomfortable at the thought of taking prints from someone who may be very big and strong, or intoxicated, or belligerent, or dirty, or all of these. This is understandable. On the other hand, a subject may be so "helpful" that he is a hindrance. Be flexible in approaching any situation. The experienced officer puts the donor at ease before starting the fingerprinting procedure, perhaps by offering a cup of coffee or a cigarette, or simply a kind word, while maintaining a businesslike attitude.

The most important factor in producing high-quality inked fingerprints, as suggested earlier, is the ability and integrity of the operator, the officer who takes the prints. Nearly anyone who possesses the skills and aptitude needed for a clerking job can become an expert at taking fingerprints, and nearly everyone can be a fingerprint donor (fewer than one percent of the human population are not printable). In other words, faulty inked impressions that occur on fingerprint cards are attributable largely to one cause–carelessness[1].

The wise law enforcement administrator, in seeking an employee to assume responsibility for taking inked fingerprints, looks for meticulous work habits above all else. An employee who cares about his or her work, and who possesses meticulous work habits, can dramatically reduce the probability of producing unusable prints, as one Montana law enforcement agency recently found out. The adminstrator of this agency trained his supervisors to recognize classifiable fingerprints, then required the supervisors to examine and approve all fingerprint cards before submitting them. By holding supervisors accountable for fingerprint quality, and by insisting on meticulousness, this agency reduced its rate of submitting unclassifiable prints from 15 percent to three percent, almost overnight.

Knowing the *specific purpose* for taking a set of fingerprints often helps the operator produce prints that are more serviceable. For example: if the Criminal Identification Bureau wishes to classify prints in order to conduct a main file search, it needs impressions of the first joints of all ten fingers. If the Bureau is conducting a *latent print search*, however, it may need impressions of the entire *palmar side* of the hands–or *major case prints*. In rare instances, the Bureau may need impressions of the soles of the feet. So, the operators who take the prints should know the specific uses that identification analysts will make of those prints. This means that administrators and supervisors should inform their operators about the nature of the *latent print evidence* that an investigation has produced.

Law enforcement often uses fingerprints to identify

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deceased persons. If the identity of a dead body is a certainty within reasonable bounds and the deceased person's prints are known to be on file, a print from just one finger is sufficient. If the identity of the body is questionable, however, a full set of ten fingerprints is in order; the Criminal Identification Bureau needs the full set for a main file search.

A general rule of thumb for fingerprint operators: *If you don't know the nature of the latent print evidence that an investigation has produced, take a full set of major case prints.*

This discussion has centered on the inked prints themselves, but equally worthy of the fingerprint operator's attention is the *other* descriptive information that must go onto the fingerprint card. This information includes the following critical items: date of birth; alias(es), including maiden names; social security number; height and weight; place of birth and nationality, and scars, marks and tatoos. The Criminal Identification Bureau needs all these items--or *descriptors*--in order to conduct a main file search. For help in filling out fingerprint cards see the *Guide to Law Enforcement Services and Privacy and Security Procedures Manual*, which should be part of every law enforcement agency's library. Fingerprint operators often overlook the very simplest yet extremely important requirement on the card--the *signature*. The operator's signature should be legible, and should be accompanied by the operator's identification number. An unsigned fingerprint card, or one that bears a signature that generates some question about the operator's identity, may be useless as evidence in court.

The responsibility for keeping complete and accurate records of fingerprints and the identities that attach to them belongs to the Criminal History Records Section of the Criminal Identification Bureau. This vast body of information is an invaluable tool of law enforcement, provided that local agencies--whose officers both *contribute* and *use* the fingerprint information on record--maintain a high standard of quality in every aspect of the fingerprint identification process. In future articles, MJQ will provide information on the ways and means to maximize the effectiveness of that process.

REFERENCES

[1]Robert D. Olsen, *Scott's Fingerprint Mechanics* 1st Ed. (Springfield, Illinois: Charles C. Thomas, Pub., 1978), pp. 76-79.

**Mr. Miller is Chief of the state Criminal Identification Bureau.**

# Networking

# Investigative Uses of the CriminalJusticeInformationNetwork

## Karen Nelson

A police officer in a small, central Montana town receives a radio report of a suspicious vehicle near the park. He reaches the scene, observes the car, and radios its license plate number to the dispatch operator. Seconds later the operator tells the officer that the car was stolen in New Mexico, and that he should exercise extreme caution. Because this police officer has the *right information* at the *right time*, he is able to recover a stolen vehicle and arrest the three illegal aliens who occupy it--without bringing injury to himself or anyone else.

A sheriff's office in southwest Montana is investigating a sexual assault. The victim gives the investigating officer certain details about the suspect's car. Within an hour the officer obtains a printed report that contains detailed registration data for every vehicle in the area that fits the description. Later that same day sheriff's deputies find and arrest the suspect, thanks to the report.

Another sheriff's office in western Montana has found the body of an unidentified male. In an effort to discover the dead man's identity, investigators are evaluating information on missing people who share the same physical characteristics--information that is pouring into the sheriff's office from all over America. Chances are fair that an identification will be made.

A desperate prisoner escapes from the Montana State Prison in Deer Lodge. The Criminal Justice Information Network operator in the Powell County Sheriff's Office prepares a message that gives details of the escape and a description of the escapee. Within minutes that broadcasted message will arrive in every law enforcement agency in Montana and the surrounding states.

These examples are not hypothetical. They actually happened. And they all illustrate the impressive capabilities of Montana's new Criminal Justice Information

Network, or CJIN (pronounced "SEE-jun").

The network is a sophisticated telecommunications system that serves Montana's criminal justice community. Its managing agency is CJIN Services, which is part of the Montana Department of Justice's Data Processing Division. More than a means of sending messages among its user agencies, CJIN is an entryway into three primary systems--the National Crime Information Center (NCIC), the National Law Enforcement Telecommunications System (NLETS), and Montana's own Criminal Justice Information System.

The Federal Bureau of Investigation established NCIC in 1967, providing law enforcement agencies the means to exchange documented criminal justice information on a nationwide basis. The Center uses a sophisticated computer located in Washington, D.C., to manage access to 12 principal files.

Authorized agencies may place records in these files, if they have proper documentation to support their entries. A *document entry* requires the following documentation: (a) A theft report for items of stolen property; (b) a warrant for the arrest of a wanted person; (c) a missing person report for an individual, filed with a law enforcement agency by a parent, legal guardian, or next of kin; or a written statement from a physician or other authoritative source that substantiates the missing person's physical or mental disability; (d) case documentation for an unidentified body; or (e) arrest fingerprint card(s) for a criminal history record.

Authorized agencies may also request information from the NCIC files, if the request has a legitimate criminal justice purpose. Presently, the *network response time* to an inquiry, or the time the computer takes to give out the information, is about seven seconds. This lightning-fast response is often critically important to law enforcement officers who face immediate decisions about how to handle people or situations.

According to a report in a recent issue of its newsletter, NCIC has literally hundreds of thousands of records in its files under "Articles," for example, and millions of records under "Guns, Stolen and Recovered," at any given time. The point to be made is that NCIC's body of information in these 12 categories, or the *on-line features*, is extensive, and therefore very valuable.

In addition to the *on-line features*, however, NCIC provides two *off-line features* that enable users to conduct searches of a vast body of information.

The first of these is the NCIC *data base*, which contains all active records. Suppose that a detective in Billings is investigating a homicide committed with a gun. The ballistics report from the Criminal Investigation Laboratory in Missoula shows the gun's make and caliber. An *off-line search* of all active stolen gun records will produce a list of those that match the make and caliber of the gun used to kill someone in Billings, Montana. If that particular murder weapon were stolen, and the time and place of the theft were on record, the Billings detective would have a valuable lead concerning the whereabouts of the killer at a given time.

The NCIC's *historical records* and its *transaction log* make up the information pool that is available for the second type of off-line search. The *transaction log* records information on all entries into the system files, and facts about the inquiries themselves (like what agency made an inquiry, at what time, on what date, for what purpose, etc.) A search of this body of information can produce very positive results. Suppose, for example, that the Cascade County Sheriff's Office finds a homicide victim several days after the killing took place, and discovers that the victim's car is missing. The killer might be in possession of that car. The investigating officer can conduct a search of NCIC's transaction log to find out whether any other police agency in the nation asked about this particular vehicle after the homicide occurred. If the search reveals that the Police Department in Louisville, Kentucky, asked whether the car had been reported stolen, the Cascade County Sheriff's Office has a lead about the whereabouts of the probable killer.

### *Principal Files of the National Crime Information Center*

1. Article
2. Boat
3. Canadian Warrant
4. Gun--Stolen or Recovered
5. Interstate Identification Index (criminal history)
6. License Plate
7. Missing Person
8. Securities
9. U.S. Secret Service Protective
10. Unidentified Persons
11. Vehicle
12. Wanted Person

Investigative off-line searches are indeed effective. In 1983, NCIC received 1,893 requests for such searches. The results were 131 arrests and the recovery of nearly $2 million in stolen property.

Phoenix, Arizona, is the home of the National Law Enforcement Telecommunications System, which has a board of directors elected by law enforcement agencies in all 50 states, the District of Columbia and Puerto Rico. A nonprofit corporation that became reality in 1966, NLETS provides a computer system for the exchange of information among criminal justice agencies throughout America. In addition, the system gives access to every state's motor vehicle files, driver license files and criminal history files.

A notable difference between NLETS and NCIC is that the former allows "free text" messages, meaning that agencies can communicate with each other in plain English, and not merely in symbols, codes and fields. Suppose that the Rosebud County Sheriff's Office wants to communicate

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with the San Francisco Police Department about an extradition. The operator in Montana types the message on a terminal and sends it. Seconds later the San Francisco Police Department receives that message on its own NLETS terminal.

A police officer in Butte may need registration information about an out-of-state car that he has just pulled over. Because all states have computerized motor vehicle files that are accessible through NLETS, the Butte-Silver Bow Law Enforcement operator can obtain the needed information and relay it to the police officer very quickly.

Montana's Criminal Justice Information Network serves 76 local, state and federal law enforcement agencies–all of whom have terminals that give access to the network. Thanks to CJIN, these *user agencies* can take advantage of NCIC and NLETS services around the clock. But they can also use numerous *state* files, like the Motor Vehicle Division's vehicle registration and driver license files; the Criminal Identification Bureau's criminal history files; the Montana stolen vehicles file; and the wanted person file.

Law enforcement agencies can use CJIN to do off-line searches of its files, just as they do with NCIC. Among the most productive of these is the *off-line vehicle search*, which generates a list of vehicles that share certain common characteristics. Example: a hit-and-run accident happens, and witnesses tell the investigating officer that the suspect vehicle is a blue 1979 Chevrolet Nova with Lewis and Clark County plates. The officer asks his CJIN operator to do an off-line vehicle search in order to obtain registration information (i.e., the owner's name and address) on every blue 1979 Nova registered in Lewis and Clark County. The search is possible even if the inquiring agency does not have information that is this detailed; CJIN can produce a list of all blue Novas in any county, of all model years, if this information is lacking, or all blue Novas in the state.

Unquestionably, Montana's CJIN is a powerful information and communications tool for law enforcement. Its effectiveness, however, relies heavily on the competence and dedication of its local users. Network rules and procedures are not only strict, but also strictly enforced, for which most users are thankful. The integrity of the system is the cornerstone of its reliability, and its value as an aid to criminal investigation increases every day.

CJIN Services has dedicated itself to the support and service of the criminal justice community. Peace officers, police and other criminal justice professionals whose jobs touch some aspect of CJIN should feel free to ask for additional information. Call or write to:

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## Next Issue:

The **ComCenter** will feature letters from **MJQ**'s readers. Please let us know what you think of the publication, or express your views on any aspect of criminal justice.

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